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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 YITZCHOK FRANKEL *et al.*,
22 Plaintiffs,

23 v.

24 REGENTS OF THE UNIVERSITY OF
25 CALIFORNIA *et al.*,
26 Defendants.

Case No.: 2:24-cv-4702-
MCS

**SUPPLEMENTAL
MEMORANDUM AND
PROPOSED ORDER IN
SUPPORT OF
PLAINTIFFS' MOTION
FOR PRELIMINARY
INJUNCTION**

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* admitted *pro hac vice*

1 Pursuant to the Court's order at the July 29 hearing, Plaintiffs and
2 Defendants met and conferred to discuss proposed terms for a stipulated
3 order granting a preliminary injunction in this case. After a telephonic
4 meet and confer and several email exchanges, the parties were unable to
5 agree upon terms. Plaintiffs therefore submit the attached proposed
6 order for a preliminary injunction, Ex. 2, and respectfully request that
7 this Court issue that order. In addition, pursuant to the Court's order at
8 the July 29 hearing, Plaintiffs explain below that no bond should be
9 required in this case under Federal Rule of Civil Procedure 65(c).

10 DISCUSSION

11 I. Meet and confer efforts.

12 Counsel for Plaintiffs, Mark Rienzi emailed a first draft of Plaintiffs'
13 proposed injunction to Defendants at 9:06 AM on Wednesday, July 31,
14 2024. A true and correct copy of that proposed injunction is attached as
15 Exhibit 1. Counsel for Defendants, Matthew Cowan, responded at 6:00
16 PM, offering to hold a telephonic conference to discuss proposed terms in
17 the morning or afternoon of Thursday, August 1. That telephonic
18 conference took place at 9:00 AM on August 1, during which Cowan
19 discussed Defendants' general approach to the proposed preliminary
20 injunction. Cowan circulated Defendants' proposed language on
21 Thursday, August 1, 2024, at 4:37 PM.

22 Rienzi responded on Friday, August 2 at 12:06 PM, noting certain
23 terms Plaintiffs could agree to but pointing out that other terms were not
24 consistent with remedying the religious discrimination against Jews
25 present in this case or failed to bind UCLA not to discriminate going
26 forward. Cowan responded later that day, at 7:37 PM, stating that
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1 Defendants could not agree to Plaintiffs' proposal, but would send a
2 counter proposal.

3 Defendants emailed that second proposal at 3:27 PM on Saturday,
4 August 3, 2024. Plaintiffs could not agree to that proposal and responded
5 with a counter-proposal at 6:29 AM on August 5, 2024. A true and correct
6 copy of that proposed injunction is attached as Exhibit 2.

7 After this exchange of these counter-proposals, the parties were
8 unable to reach agreement on the terms of the injunction.

9 **II. The Court should grant Plaintiffs' proposed preliminary**
10 **injunction.**

11 Plaintiffs' proposed injunction would secure the constitutional and
12 statutory rights of UCLA's Jewish students while preserving flexibility
13 for UCLA officials. Plaintiffs' proposal would ensure that UCLA will not
14 facilitate the exclusion of Jews, and will no longer provide services or
15 campus spaces that are not open to Jews. July 29 Hearing Transcript,
16 Dkt.80 at 34:13-19. While Plaintiffs' proposal does not mandate or
17 prohibit UCLA from employing any specific strategy, it directs that
18 UCLA cannot approach these problems in a way that allows Jews to be
19 excluded, or that facilitates the exclusion of Jews. By focusing on
20 programs and services that are "ordinarily available" to all, *see, e.g.*, Ex.
21 2 ¶¶ 2-3, it also requires only that UCLA treat its Jewish students and
22 faculty members equal to other students, not to give them preferential
23 treatment. And through a modest reporting requirement, it ensures that
24 UCLA will be promptly made aware of any exclusion, *id.* ¶ 7, at which
25 time UCLA can take whatever action it deems appropriate—so long as
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1 UCLA does not allow or facilitate the exclusion of Jews while others
2 retain access to services and campus spaces.¹

3 By contrast, UCLA's proposed injunction, as shared with Plaintiffs,
4 fails to guarantee that UCLA will not again facilitate or acquiesce in the
5 exclusion of Jews as it cycles through various techniques to de-escalate
6 potential new encampment problems. The central issue in this case
7 concerns religious discrimination against Jews, yet Defendants' proposed
8 injunction does not contain any requirement not to discriminate in the
9 new semester.

10 Moreover, the flexibility that UCLA seeks to retain for itself would
11 vitiate the injunction entirely. It is Defendants' position that they acted
12 in good faith all throughout April and May of 2024, and they therefore
13 are not legally culpable for any of their actions. *See, e.g.*, UCLA Opp.,
14 Dkt.62 at 3-4. That means that the challenged behavior at issue in this
15 case would presumably satisfy their proposed injunction language
16 through the "good faith" and "sole discretion" provisos. UCLA's proposal
17 would therefore expose Jewish students to the precise type of
18 discrimination they faced as a result of UCLA's facilitation of the
19 exclusion of Jews from Royce Quad this spring.

20 UCLA's "good faith" proviso would also be judicially unadministrable.
21 Although UCLA has repeatedly expressed concerns about
22 administrability, July 29 Hearing Transcript, Dkt.80 at 36:3-38:10;
23 UCLA Opp., Dkt.62 at 21-22, their proposal provides no criteria for
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25 ¹ Paragraph 5 of Plaintiffs' proposed injunction is derived from UCLA's
26 proposed language. While Plaintiffs do not object to inclusion of this
27 provision, they do not view it as necessary so long as the other provisions
28 of the proposed injunction remain.

1 assessing when the capacious and hard-to-prove standard of good faith
2 would be violated. The “good faith” proviso also begs the question: good
3 faith *as to what*? Since UCLA’s proposal does not so much as mention
4 Jews or discrimination, it is not clear that the injunction even requires a
5 good faith effort at ceasing the challenged behavior in this case, namely
6 discrimination against Jews. The good faith standard thus completely
7 frees UCLA from its constitutional obligations to cease the
8 discrimination and harassment that Plaintiffs experienced from
9 recurring this semester.

10 This broad and injunction-nullifying flexibility is also embodied in
11 Defendants’ proposal that so long as Defendants “initiate” steps to
12 dismantle an encampment, they have complied with the injunction,
13 regardless of whether Jews remain excluded, and regardless for how
14 long. This, too, has been UCLA’s consistent position even about Royce
15 Quad—that because they took minimal steps to counter the encampment,
16 they cannot be held responsible for the constitutional violations that
17 ensued. *See* UCLA Opp., Dkt.62 at 3-4, 18-19; Beck Decl., Dkt.62-3 at ¶ 5.
18 An “injunction” will not provide meaningful protection if it leaves UCLA
19 completely free to repeat its problematic and discriminatory behavior.
20 Nor could giving UCLA a free pass for merely “initiating” action be part
21 of a properly-framed injunction.

22 Plaintiffs fully understand that UCLA must retain some flexibility as
23 to *how* to secure the constitutional and statutory rights of Jews on
24 campus. It is not Plaintiffs’ position that this Court must require that
25 Defendants employ a specific level of force or deploy specific tactics to
26 achieve that result. But Defendants’ proposed injunction is not tailored
27 to remedy the *what* of this case: the entirely undisputed constitutional
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1 injuries Plaintiffs have experienced thus far that they justifiably fear will
2 continue if UCLA is not obligated to change its behavior.

3 **III. No security should be required.**

4 “Rule 65(c) invests the district court with discretion as to the amount
5 of security required, *if any*.” *Johnson v. Couturier*, 572 F.3d 1067, 1086
6 (9th Cir. 2009) (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th
7 Cir. 2003)). Courts typically find it “appropriate to issue [a] preliminary
8 injunction without requiring security based on” a “showing that
9 [Plaintiff] is likely to prevail on” a First Amendment claim. *NetChoice,*
10 *LLC v. Bonta*, 692 F. Supp. 3d 924, 966 (N.D. Cal. 2023); *see also Weaver*
11 *v. City of Montebello*, 370 F. Supp. 3d 1130, 1139 (C.D. Cal. 2019)
12 (waiving bond in First Amendment case); *United Food & Com. Workers*
13 *Loc. 99 v. Brewer*, 817 F. Supp. 2d 1118, 1128 (D. Ariz. 2011) (same); *Baca*
14 *v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal.
15 1996) (citing *Smith v. Board of Elections Comm’rs for Chicago*, 591
16 F. Supp. 70, 71-72 (N.D. Ill. 1984)) (“to require a bond would have a
17 negative impact on plaintiff’s constitutional rights, as well as the
18 constitutional rights of other members of the public affected by the
19 policy”).

20 There is no reason to vary from that practice here. Plaintiffs’ First
21 Amendment rights are at stake and thus a bond would be inappropriate.
22 Moreover, the proposed injunctions Defendants have shared with
23 Plaintiffs have not included the requirement of a bond.

24 **CONCLUSION**

25 Plaintiffs respectfully request that this Court enter their proposed
26 preliminary injunction without requiring the posting of security.
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2 Dated: August 5, 2024

Respectfully submitted,

3 /s/ Eric C. Rassbach

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